

AGREEMENT FOR SERVICES #6161

IHSS Public Authority Labor Relations Consultation

THIS AGREEMENT is made and entered into by and between the El Dorado County In-Home Supportive Services Public Authority, a local agency established by El Dorado County Ordinance Code Chapter 8.78 (hereinafter referred to as "Authority") and Industrial Employers and Distributors Association, a California corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2200 Powell Street, Suite 1000, Emeryville, CA 94608, and whose Agent for Service of Process is *Stacey Cue, 2200 Powell Street, Suite 1000, Emeryville, CA 94608*, (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, the County of El Dorado (County) Board of Supervisors sits as the Governing Board of the El Dorado County In-Home Supportive Services (IHSS) Public Authority; and

WHEREAS, Assembly Bill (AB) 1682 (1999) required that each county create an employer of record for IHSS providers for the sole purpose of setting salaries and benefits; and

WHEREAS, the County has been designated as the employer of record for IHSS workers in El Dorado County, and the County performs this function through the El Dorado County IHSS Public Authority; and

WHEREAS, the Authority does not "employ" the IHSS workers in the traditional sense, in that each IHSS client hires the IHSS worker for their care and is solely responsible for setting their schedule, working conditions, and determining the duration of their employment; and

WHEREAS, Authority has determined that it is necessary to obtain a Consultant to provide consultation and advice on employer-employee relations between the Authority and the union on an "as requested" basis; and

WHEREAS, Consultant has represented to Authority that it is specially trained, experienced, expert, and competent to perform the special services described in Article I, "Scope of Services;" that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and Authority relies upon those representations; and

WHEREAS, it is the intent of the parties that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, Authority has determined that the provision of these services by Consultant is in the public's best interest, and that these services are necessary to protect against conflict of interest or to ensure independent and unbiased findings where there is a need for an outside perspective. In accordance with El Dorado County Ordinance Code, Chapter 3.13.030, El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

NOW, THEREFORE, Authority and Consultant mutually agree as follows:

ARTICLE I

Scope of Services: Consultant agrees to furnish the personnel and equipment necessary to provide consultation and advice on employer-employee relations including, but may not be limited to:

1. Advise and consult with the Authority's Governing Board and the Health and Human Services Agency (HHS) Director at such times and places as may be mutually agreed upon by Consultant and the Authority's Governing Board or the HHS Director on matters relating to employer-employee relations;
2. Meet and confer in good faith for and on behalf of the Authority as the designated representative of the Authority's Governing Board (Governing Board) and the HHS Director with representatives from the employee organization (currently United Domestic Workers of America [Union]) at such times and places as may be mutually agreed upon by Consultant, the Governing Board, the Union, and the HHS Director;
3. Report to the Governing Board and the HHS Director on the progress of meeting and conferring in good faith with the Union;
4. Analyze Union proposals, prepare written management proposals and counter proposals, and draft final memoranda of understanding (MOU) in a form and manner approved by the Governing Board and the HHS Director;
5. Consult on preparation of estimates of cost implementation of a MOU with the Union for the purpose of negotiating;
6. Prepare and retain complete records of the collective bargaining process(es) detailing the nature, status, and disposition of all bargaining proposals. Consultant shall provide all records, documents, and materials at the conclusion of the collective bargaining process(es);

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the dates of July 1, 2022 through June 30, 2023, unless terminated earlier pursuant to the provisions contained herein this Agreement under Article XIII "Default, Termination, and Cancellation" or Article XI "Fiscal Considerations."

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, Authority agrees to pay Consultant upon the satisfactory completion and Authority’s acceptance of work, monthly in arrears and within forty-five (45) days following the Authority’s receipt and approval of invoice(s) identifying services rendered.

For the purposes of this Agreement, the billing rate shall be \$1,882.33 per calendar month. For partial months the rate shall be \$1,882.33, prorated at a daily rate. This fee is all inclusive and shall include, but not be limited to: travel, lodging or meals, phone calls, and faxes.

Invoices:

Invoices: It is a requirement of this Agreement that Consultant shall submit an original invoice, similar in content and format with the following sample available at: https://www.edcgov.us/Government/hhsa/Pages/hhsa_Consultant_resources.aspx. Consultant is required to submit invoices no later than fifteen (15) days following the end of a “service month.” For billing purposes, a “service month” shall be defined as a calendar month during which Consultant provides Services in accordance with “Scope of Services.” Failure to submit invoices and Authorizations by the 15th of the month following the end of a service month shall result in payment(s) being withheld until the appropriate documents are received by staff. Receipt by Authority of invoices and associated paperwork submitted by Consultant for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by Authority, Consultant may be required to submit additional or new information, which may delay reimbursement.

Invoices shall be sent as follows, or as otherwise directed in writing by Authority:

<i>Email (preferred method):</i>	<i>U.S. Mail:</i>
<u>SSCWSinvoice@edcgov.us</u> Please include in the subject line: “Contract #, Service Month, Description / Program	County of El Dorado Health and Human Services Agency Attn: Finance Unit/ IHSS PA 3057 Briw Road, Suite B Placerville, CA 95667-5321

or to such other location as Authority directs.

In the event that Consultant fails to deliver the documents pursuant to this Agreement, Authority at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in Article titled “Default, Termination, and Cancellation.”

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ARTICLE IV

Maximum Obligation: The maximum contractual obligation under this Agreement shall not exceed \$23,000 for all of the stated services during the term of the Agreement.

ARTICLE V

Audits, Compliance, and Monitoring:

- A) Consultant shall provide a copy of any Audit to County within thirty (30) days of completion of said audit.
- B) Audits and compliance monitoring by any representative of the Federal government, State government, or County may include the review of any and all terms related to this Agreement. Audits or monitoring by the Authority may be performed by way of annual Contract Monitoring Surveys. Consultants receiving a Contract Monitoring Survey shall, within sixty (60) days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the Authority to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Consultant until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Consultant be deemed insufficient or inaccurate.
- C) All files, records, documents, sites, and personnel are subject to review by representatives from Authority, State or Federal government.
- D) Upon notification of an exception or finding of non-compliance, the Consultant shall submit evidence of Corrective Action within thirty (30) days, or as otherwise specified in the notice of required corrective action provided by the Authority. Continued non-compliance beyond due date for submission of Corrective Action may lead to termination of this Agreement in accordance with Article XIII, "Default, Termination, and Cancellation."
- E) Failure by Authority to notify or require Corrective Action does not constitute acceptance of the practice of waiver of the Authority's right to enforce.

ARTICLE VI

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to Authority. Consultant agrees that it shall not default on any obligations to Authority during the term of this Agreement.

ARTICLE VII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VIII

Consultant to Authority: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from Authority and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to Authority and shall

not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to Authority during term hereof.

ARTICLE IX

Assignment and Delegation: Consultant is engaged by Authority for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of Authority.

ARTICLE X

Independent Consultant: The parties intend that an independent Consultant relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf, without the prior authorization of the County's Board of Supervisors.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that Authority is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of Authority business, Authority will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, Authority shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and Authority released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for the Authority for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the Authority, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Audit by California State Auditor: Consultant acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by

the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
4. A violation of Article XXI, "Conflict of Interest."

B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon sixty (60) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to Authority shall be addressed as follows:

COUNTY OF EL DORADO
HEALTH AND HUMAN SERVICES AGENCY
3057 BRIW ROAD
PLACERVILLE, CA 95667
ATTN: CONTRACTS UNIT

or to such other location as the Authority directs.

with a carbon copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: PURCHASING AGENT

Notices to Consultant shall be addressed as follows:

INDUSTRIAL EMPLOYERS DISTRIBUTORS ASSOCIATION
2200 POWELL STREET, SUITE 1000
EMERYVILLE, CA 94608
ATTN: PRESIDENT, or successor

or to such other location as the Consultant directs.

ARTICLE XV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify Authority in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the Authority Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

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ARTICLE XVI

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Authority to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

Litigation:

- A. County, promptly after receiving notice thereof, shall notify the Consultant in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Consultant must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Consultant of its indemnification obligations.
- B. Consultant, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

ARTICLE XVIII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the Authority of El Dorado Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.

- D. In the event Consultant is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, Authority may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to Authority, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Authority, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting Authority Department either independently or in consultation with Risk Management, as essential for protection of the Authority.

ARTICLE XIX

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control; and
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XX

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XXI

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will

provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Article XIII, "Default, Termination, or Cancellation."

ARTICLE XXII Nondiscrimination:

- A) Authority may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended, the California Family Rights Act (Government Code Section 12945.2), the Unruh Civil Rights Act (California Civil Code, Division I, Part 2, Section 51, et seq), the Ralph Civil Rights Act (California Civil Code, Division I, Part 2, Section 51.7), the California Trafficking Victims Protection Act (California Civil Code, Division I, Part 2, Section 52.5), the Disabled Persons Act (California Civil Code, Division I, Part 2.5), and as applicable, Section 11135 et. seq., of the California Government Code, prohibiting discrimination in all state-funded programs. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B) Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C) Consultant's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.

ARTICLE XXIII

California Residency (Form 590): If Consultant is a California resident, Consultants must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or Authority shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXIV

County Payee Data Record Form: All independent Consultants or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXV

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXVI

Licenses: Consultant hereby represents and warrants that Consultant and any of its subContractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subContractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subContractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXVII

Administrator: The Authority Officer or employee with responsibility for administering this Agreement is Kimberly McAdams, Chief Fiscal Officer, Health and Human Services Agency, or successor.

ARTICLE XXVIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXIX

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXX

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXXI

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

ARTICLE XXXII

Special Terms and Conditions:

- A. **HIPAA Compliance:** All data, together with any knowledge otherwise acquired by Consultant during the performance of services provided pursuant to this Agreement, shall be treated by Consultant and Consultant's staff as confidential information. Consultant shall not disclose or use, directly or indirectly, at any time, any such confidential information. If the Consultant receives any individually identifiable health information (Protected Health Information or PHI), the Consultant shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.
- B. **Confidentiality and Information Security Provisions:** Consultant shall comply with applicable Federal, State, and local laws and regulations, including but not limited to the Code of Federal Regulations Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally Identifiable Information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

1. Permitted Uses and Disclosures of PII by Consultant.
 - a. Permitted Uses and Disclosures. Consultant shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Consultant's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Consultant, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.
 - b. Specific Uses and Disclosures provisions. Except as otherwise indicated in the

Agreement, Consultant shall:

- i) Use and disclose only PII for the proper management and administration of Consultant or to carry out the legal responsibilities of Consultant, provided that such use and disclosures are permitted by law; and
 - ii) Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information that is no longer to be retained by Consultant by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.
2. Responsibilities of Consultant.
- a. Consultant agrees to safeguards:
 - 1) To prevent use or disclosure of PII other than as provided for by this Agreement. Consultant shall provide Authority with information concerning such safeguards as Authority may reasonably request from time to time; and
 - i) Consultant shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
 - ii) Consultant shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Consultant shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
 - b. Consultant shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
 - 1) Network based firewall or personal firewall; and
 - 2) Continuously updated anti-virus software; and
 - 3) Patch-management process including installation of all operating system/software vendor security patches.
 - c. Mitigation of Harmful Effects. Consultant shall mitigate, to the extent practicable, any harmful effect that is known to Consultant of a use or disclosure of PII by Consultant or its subContractors.
 - d. Agents and subContractors of Consultant. The same restrictions and conditions that apply through this Agreement to Consultant, shall also apply to Consultant's subContractors and agents.

- e. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Consultant shall notify Authority immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two (2) business days of discovery, at (530) 621-5565. Consultant shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Consultant shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach
- C. **Fraud or Abuse Reporting:** Consultant acknowledges and agrees to comply with mandated reporter requirements pursuant to provisions of Welfare and Institution Code, Section 15630-15632. Additionally, during the performance of this Agreement, the Consultant shall report immediately, by telephone to (530) 621-6161, or other such telephone number that may be provided, and in writing, to the County of El Dorado Health and Human Services Agency at 937 Spring Street, Placerville, CA 95667, any known or suspected incidents of fraud or abuse to Clients or household occupants observed or learned of during the delivery of Consultant services.
- D. **Access to Records:** The Consultant shall provide access to the federal, state or local Consultant agency, the Controller General of the United States, or any of their duly authorized federal, state or local representatives to any books, documents, papers and records of the Consultant which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts and transcriptions.
- E. **Compliance with All Federal, State, and Local Laws and Regulations:** Consultant shall comply with all federal, state and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Consultant shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Consultant from the County Health and Human Services Agency.

Consultant shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, health, and sanitation regulations. Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Consultant further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado, and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement

- F. **Debarment and Suspension Certification:** By signing this Agreement, the Consultant agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 45 CFR 76 and Consultant further certifies to the best of its knowledge

and belief that it and its principals or affiliates or any sub-contractors utilized under the Agreement:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
2. Have not within a three (3)-year period preceding this application/proposal/Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the above Paragraph B.
4. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
5. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4) or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the state.
6. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions in accordance with 45 CFR Part 76.

If the Consultant is unable to certify to any of the statements in this certification, the Consultant shall submit an explanation in writing to Authority.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (<http://www.archives.gov/federal-register/codification/executive-order/12549.html>).

If the Consultant knowingly violates this certification, in addition to other remedies available to the federal and state governments, Authority may immediately terminate this Agreement for cause or default.

- G. Accounting Systems and Financial Records:** Consultant shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and any other local or private organizations. Consultant's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." More particularly, Consultants are responsible for complying with the Uniform Grants Guidance and 45 CFR Part 92, and the allowability of the costs covered therein. Consultant must obtain written approval from a member of the HHS Executive

Management prior to the expenditure of any “special” or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of the Uniform Grants Guidance. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected (LSA) issued in the current month. The *Federal Register* home page offers links to both the *Federal Register* and the CFR. Electronic CFR (e-CFR) versions are available online via the U.S. Government Printing Office (GPO) website. Please note that documents on e-CFR, although updated daily, are unofficial editorial compilations of CFR material and *Federal Register* amendments and on-line versions may not be the most current version available.

- H. **Annual Audit:** Pursuant to the Office of Management and Budget Uniform Grants Guidance, any entity that receives federal funds, as stated in the Uniform Grants Guidance, for the purposes of carrying out federal programs, must complete an annual audit. The funding threshold is aggregate funds from all sources. If requested by Authority, Consultant shall mail a certified copy of said completed annual audit to Authority’s Health and Human Services Agency at the address listed in Agreement’s “Notice to Parties” Article within thirty (30) days of Consultant’s receipt of same. All adverse audit findings must be documented and included with completed annual audit. Certified evidence of correction(s) of adverse audit findings shall be provided to Authority at the HHS address listed in Agreement’s Article titled “Notice to Parties.”
- I. **Lobbying Certification:** The Consultant, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Consultant shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 “Disclosure of Lobbying Activities” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- J. **Conflict Prevention and Resolution:** The terms of this Agreement shall control over any conflicting terms in any referenced document, except to the extent that the end result would constitute a violation of Federal or State law. In such circumstances, and only to

the extent the conflict exists, this Agreement shall be considered the controlling document.

K. **Waivers:** Failure of Authority to enforce any provision of this Agreement shall in no event be considered a waiver of any part of such provision or any other provision contained herein. No waiver by Authority of any breach or default by Consultant shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Consultant's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

ARTICLE XXXIII

Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

ARTICLE XXXIV

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

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
Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: 
Kimberly McAdams (Apr 7, 2022 11:39 PDT)
Kimberly McAdams
Acting Chief Fiscal Officer
Health and Human Services Agency

Dated: 04/07/2022

Requesting Department Head Concurrence:

By: 
Donald Semon (Apr 7, 2022 11:51 PDT)
Donald Semon
Director
Health and Human Services Agency

Dated: 04/07/2022

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement #6161 on the dates indicated below.

-- AUTHORITY --

Dated: 5/10/22

By: Lori Parlin
Lori Parlin, Chair
Board of Supervisors
"Authority"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: Kyra Schaubholz
Deputy Clerk

Dated: 5/10/22

-- CONSULTANT --

Industrial Employers Distributors Association
A California Corporation

By: Stacey Cue
Stacey Cue (Apr 7, 2022 11:54 PDT)
Stacey Cue
President and Corporate Secretary
"Consultant"

Dated: 04/07/2022

CM